

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DARYL TOEWS**, on January 18, 1999 at 3:10 P.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
Sen. Bill Glaser, Vice Chairman (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis (R)
Sen. John Hertel (R)
Sen. Bob Keenan (R)
Sen. Debbie Shea (D)
Sen. Mike Sprague (R)
Sen. Spook Stang (D)
Sen. Mignon Waterman (D)
Sen. Jack Wells (R)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 134, 1/12/1999; SB 3,
1/12/1999

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Proponents: Lance Melton, Montana School Boards Association
Wayne Buchanan, Board of Public Education
Bob Vogel, Helena School Board Member
Gail Gray, Office of Public Instruction

**Don Waldron, Montana Rural Education Association &
Montana Association of County School
Superintendents**

Opponents: None

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, said **SB 134** revised the laws pertaining to personal liability of Board of Trustee members and explained currently a school board member could personally be sued for loss of money and other things. **SB 134** gave personal immunity from lawsuits and exemplary and punitive damages to Trustees.

Proponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA), read his written testimony and referred to the attachments **EXHIBIT (eds13a01)**.

Wayne Buchanan, Board of Public Education, said the content of this bill was near and dear to his heart because he was Executive Director of the Montana School Boards Association for many years and he knew how much work school board trustees put into serving without pay and it was a shame to put their personal fortunes at stake. He explained the Board of Public Education was the school board for the School for the Deaf and Blind; in fact, the Foundation for that School did invest funds so in a way this bill could affect the Board of Public Education. He urged the Committee's support.

Bob Vogel, Helena School Board Member, said he was under litigation a few years ago under the provision of **SB 134**; however, today he hoped things were cleared up. He stated it was a fairly complex matter when it came to school district funds because Helena did it as most school districts did -- through the County Investment Pool and the school district was only a part of that. He said school board members spent a lot of time and energy but were not compensated as were county commissioners or other elected officials. He asked for consideration of the bill that would put the school trustees on equal footing with other elected officials.

Gail Gray, Office of Public Instruction (OPI), said they rose in support of **SB 134** because serving as a trustee was important but also resulted in pressure, demands and thanklessness. She reminded the Committee some of its members had served or were serving on school boards and they didn't need the additional

pressure of personal liability. She urged the Committee's support.

Don Waldron, Montana Rural Education Association (MREA) & Montana Association of County School Superintendents (MACCS), came too late to personally testify but wanted to go on record as supporting the bill so submitted his written testimony **EXHIBIT (eds13a02)**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JON ELLINGSON asked what remedies would be available against a trustee who consented to illegal use of monies. **Lance Melton** said they would be partially contained in the attachment to his testimony, Title 45, "Provision on Official Misconduct." A person who willfully and purposely and not in good faith would be subject to criminal penalties; in addition, there was a general provision of indemnity that protected school board members and legislators as well. He explained it was 2-9-305 which said when there was a lawsuit for actions taken in the course and scope of official duties, the person was indemnified and defended by the public agencies he or she was acting on behalf of. However, there was an exception which said if the person did anything intentionally, criminally or fraudulently they did not get defense, i.e. there were other provisions that would address misconduct. **Mr. Melton** said **SB 134** removed language and allowed a person who made a good faith mistake to not be subject to personal and individual liability.

SEN. MIGNON WATERMAN asked for a brief synopsis from **Bob Vogel** of his experience. **Mr. Vogel** said the County investments were in CMO's (Collateralized Mortgage Obligation), which was not an acceptable instrument for investments for school purposes. The question was complex because it was hard to separate how much of the Investment Pool was school investment and how much was County because the monies were commingled. In fact, today the question still was whether the District's money was part of the illegal investments. He said the County decided, after much urging from the School District, to not have any investments in the CMO's; however, the County still did have a small portion there but the School District had its investments in STIF which had a lower rate of return but were also much more secure.

{Tape : 1; Side : A; Approx. Time Counter : 8.9}

SEN. BOB KEENAN asked if there were any changes in the legality of investing in CMO's. **Lance Melton** said he wasn't aware enough

of what Counties could invest in; however, he did understand from talking with County officials that over the years the laws had been refined to allow additional areas for investments of county funds. But at the same time the school district provision had remained constant and as a result there were areas where both municipal and county funds could be invested; however, the law had never been updated to allow schools a similar investment. He said as soon as there was a combination of those funds which the county treasurer invested legitimately where his or her expertise lay, the question arose as to whether there was illegal investment of school district funds that were pooled.

SEN. KEENAN asked if the school funds put into the County STIP (Short Term Investment Program) were reserve funds. **Lance Melton** said his understanding of current law was when entities didn't need their monies for immediate expenditures, they had the authority to invest their money in the Investment Pool and have the County Treasurer act on their behalf.

SEN. KEENAN asked if there was a similar situation for an administrator who might ask the Board to take this action; perhaps administrators didn't have any liability for any action - ultimately the school board accepted the responsibility. **Lance Melton** said the school administrator would be indemnified and defended for good faith errors in judgment under Section 2-9-305, as would the county treasurer and county commissioners; however, the school board member would not, under the language of this provision.

SEN. BILL GLASER referred to immunity given school board members and wondered if it was subject to Section 18, Article 2, of the Constitution where it took a 2/3 vote. **Lance Melton** said this was active language that was not required under the law and removing the language did not provide immunity to the trustees; it removed the threat of personal and individual liability. He said he strongly suggested it wasn't subject to more than a 51% proposition.

{Tape : 1; Side : A; Approx. Time Counter : 13}

Closing by Sponsor:

SEN. DALE MAHLUM said he felt **SB 134** needed to be enacted by the Legislature to get on the books for the good of the people who were working as school board trustees. He respectfully requested the Committee give **SB 134** a DO PASS.

(**CHAIRMAN DARYL TOEWS** relinquished the chair to **VICE CHAIRMAN BILL GLASER** while he presented **SB 3**).

HEARING ON SB 3

Sponsor: SEN. DARYL TOEWS, SD 48, Lustre

Proponents: None

Opponents: Gail Gray, Office of Public Instruction
Don Waldron, Montana Rural Education Association &
Montana Association of County School
Superintendents

Opening Statement by Sponsor:

SEN. DARYL TOEWS, SD 48, Lustre, said the issue of SB 3 was the word "prolonged", and explained in his district there had been a growing concern in the area of school discipline, i.e. younger students who were saying teachers could not do anything to them. He referred to EXHIBIT(eds13a03) and said it was difficult to get precise meanings of words and part of the problem with school discipline is the definition can be discipline, corporal punishment and abuse -- nobody wanted abuse for the students. He suggested "corporal punishment" was a little harder to define and most people wanted to hang very close to the "discipline" issue. He said as a result of these concerns, about a year ago he sent a letter to the National Coalition to Abolish Corporal Punishment in Schools and asked for language they could live with which would define corporal punishment. They sent the definitions as stated in EXHIBIT(eds13a04). He said he worked through the definitions and our law and it was quite clear no pain was to be inflicted. SEN. TOEWS gave an example of how a teacher might lay a hand on a younger student's shoulder and give a little squeeze by the neck, which would engage the student. Did it cause pain? Yes, for a time, though not a prolonged period of time.

He addressed further the issue of the younger student saying he or she could do anything because the teacher could do nothing. He suggested the best teacher took care of these issues in her classroom and didn't always send the problem to the principal or superintendent because often the child was looking for attention and he or she got it by being sent out of class. It would be better if those students got no attention -- the teacher would deal with the problem in a passing way. He suggested the Wisconsin definition in Exhibit 4 might be one Montana could live with.

Proponents' Testimony: None.

Opponents' Testimony:

Gail Gray, Office of Public Instruction (OPI), said OPI opposed **SB 3**, though not necessarily its objectives. She said their concern was because of interpretation reviewed by their own legal staff, i.e. without a definition of "prolonged", they saw it as another invitation to litigation, and there was already too much of that in today's schools.

Don Waldron, Montana Rural Education Association (MREA) & Montana Association of County School Superintendents (MACSS), was unable to attend but wanted his testimony to be on record so submitted written testimony **EXHIBIT (eds13a05)**.

{Tape : 1; Side : A; Approx. Time Counter : 21}

Questions from Committee Members and Responses:

SEN. MIGNON WATERMAN referred to **Exhibit 3** and asked why the Coalition preferred the Virginia or Iowa definitions. She said she preferred the Iowa definition and wondered why **SEN. TOEWS** preferred the Wisconsin one. **SEN. TOEWS** said he had this information at the time he drafted the bill and he disagreed with its last statement because he felt if a teacher put a hand on the student's shoulder and squeezed a bit, there was intent to cause a bit of pain.

SEN. WATERMAN interpreted "prolonged" sounds like a very good whack could be given as long as it wasn't for a long period of time. **SEN. TOEWS** said it was his opinion if he were a student and a teacher whacked him good, he thought the pain would be prolonged and could be defined as abuse.

SEN. BARRY "SPOOK" STANG asked about **Gail Gray's** perception if "prolonged" were undefined, there would be an opening for further lawsuits. **SEN. TOEWS** said legally, they tried looking for the precise word that was so definitive that even an attorney could not play games with it. He stated they could not find the word that would set the parameters. He said it was suggested there be a "laundry list" but that invited trouble because something was either omitted or something was included but didn't fit. He suggested that technically, "prolonged" wasn't that undefinable; rather, the message was they intended for teachers to be in charge.

SEN. MIKE SPRAGUE referred to Line 15 and suggested "inflicting" would be a long, ongoing process. **SEN. JON ELLINGSON** said it could be inferred that "inflicting" could have a longer element than "inflict."

SEN. SPRAGUE asked **Gail Gray** if she would oppose the bill less if it were "inflict" rather than "inflicting." **Ms. Gray** said OPI had two (2) attorneys whose concern was the definition of "prolonged", and not "inflicting." They felt there was not enough specific guidance for a teacher, administrator or school board member; however, they emphasized if there was a disturbance which hurt someone or if there was a weapon, physical restraint could definitely be taken, i.e. make students responsible for their actions. She stressed they were not opposed to discipline in the public schools because it was essential so they could focus on their learning; rather, it was the interpretation of this particular word that was a concern.

Closing by Sponsor:

SEN. DARYL TOEWS said the problem arising from future discussion of **SB 3** was no one offered an alternative. He said if someone found a word or group of words that addressed the problem of "prolonged", he would be open to it; however, at this point, no such word(s) had been found.

ADJOURNMENT

Adjournment: 3:45 P.M.

SEN. DARYL TOEWS, Chairman

JANICE SOFT, Secretary

DT/JS

EXHIBIT (eds13aad)